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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,255	11/12/2003	Ondrej Hendl	01068.US1	6868

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EXAMINER

TELLER, ROY R

ART UNIT PAPER NUMBER

1654

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/706,255

Applicant(s)

HENDL ET AL.

Examiner

Roy Teller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11, 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/04, 5/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

This office action is in response to the election, received 10/6/06, in which applicant elected group I, claims 1-8 and 12-13 with traverse.

The traversal is on the ground(s) that claim 1 reads on each and every element of claims 9 and 10 and the limitation of claim 11 is found in claim 1. This is not found persuasive because claims 9-11 compositions were drawn to different ingredients. Applicant further traverses claims 14 and 15 in view of the amendments. This is not found persuasive because the amendments are drawn to a method of producing and a product by process.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-8 and 12-13 are pending.

### ***Information Disclosure Statement***

The information disclosure statements, received 3/8/04 and 5/3/04, are acknowledged. A signed copy of each is enclosed hereto.

### ***Claim Objections***

Claims 12 and 13 are objected to because of the following informalities: depending upon a withdrawn claim (11). Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-8, and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Teagarden et al. (Pub.No. US 2002/0110561)

The claimed invention is drawn to a composition comprising one to three bioactive agents or specifically, crystalline ceftiofur free acid (CCFA) and one or more modified oils selected from corn oil, peanut oil, sesame oil, olive oil, palm oil, safflower oil, soybean oil, cottonseed oil, rapeseed oil, sunflower oil, as the liquid carrier and an un-modified liquid carrier. "Modified" is understood to mean a vehicle which, through physical, chemical or mechanical means, has been altered as compared to its natural (or "non-modified" in the case of synthetic liquid carriers) form such that the modified vehicle has an increased level of oxidation products. Modification is accomplished by heat or irradiation, among other means.

Teagarden et al. discloses a composition comprising one or more bioactive agents, wherein said bioactive agent is crystalline ceftiofur free acid (CCFA) and a modified liquid carrier, wherein the modified liquid carrier includes a modified oil comprising a modified vegetable oil wherein said vegetable oil is selected from the group consisting of corn oil, peanut oil, sesame oil, olive oil, palm oil, safflower oil, soybean oil, cottonseed oil, rapeseed oil, sunflower oil and mixtures thereof. The composition wherein a said non-modified saturated oil or

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non-modified non-oxidizing vehicle comprises saturated coconut oil. See, i.e., for example, abstract, claims 1, 4, 6-10.

Comprising leaves the claims open for the inclusion of unspecified ingredients even in major amounts. See MPEP 2111.03.

Therefore, the reference is deemed to anticipate the instant claims above.

### ***Conclusion***

All claims are rejected.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown (USPN 6,074,657) teaches a sterile oil suspension of an antibiotic, such as ceftiofur crystalline free acid, see abstract. Mitchell (USPN 5,013,713) teaches conventional oil formulations and methods for their preparation, see column 6, lines 17-59, column 7, lines 22-37, column 7, line 48 through column 8, line 4, and column 9, line 59 through column 10, line 23.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is 571-272-0971. The examiner can normally be reached on Monday-Friday from 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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11/7/06

RT

  
ANISH GUPTA  
PRIMARY EXAMINER